First Regular Session - 2023

Moved by Winder

Seconded by Anthon

IN THE SENATE SENATE AMENDMENT TO H.B. NO. 206

AMENDMENT TO THE BILL

On page 3 of the printed bill, following line 36, insert:

"SECTION 2. That Section 67-5206, Idaho Code, be, and the same is hereby amended to read as follows:

- 67-5206. PROMULGATION OF RULES IMPLEMENTING ADMINISTRATIVE PROCEDURE ACT. (1) In accordance with the rulemaking requirements of this chapter, the administrative rules coordinator shall promulgate rules implementing the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code. The rules shall:
 - (a) Establish a uniform numbering system applicable to rules adopted by all agencies;
 - (b) Establish a uniform style and format applicable to rules adopted by all agencies;
 - (c) Establish a publication schedule for the bulletin and the administrative code, including deadlines for the submission of documents to be included within each publication;
 - (d) Establish a uniform indexing system for agency orders; and
 - (e) Include such other rules as the coordinator deems necessary to implement the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code, and this section.
- (2) In accordance with the rulemaking requirements of this chapter, the attorney general shall promulgate rules of procedure appropriate for use by as many agencies as possible. The rules shall deal with all general functions and duties performed in common by several agencies.
- (3) In accordance with the rulemaking requirements of this chapter, the attorney general shall promulgate rules implementing the provisions of sections 67-5220 through 67-5232, Idaho Code. The rules shall specify:
 - (a) The form and content for petitions requesting an opportunity for an oral presentation in a substantive rulemaking;
 - (b) Procedures for the creation of a record of comments received at any oral presentation;
 - (c) The standards by which exemptions from regular rulemaking requirements will be authorized to correct typographical errors, transcription errors, or clerical errors;
 - (d) The form and content for a petition for the adoption of rules and the procedure for its submission, consideration and disposition;
 - (e) Procedures to facilitate negotiated rulemaking;
 - (f) The form and content of a petition for a declaratory ruling on the applicability of statutes or regulations; and
 - (g) Such other provisions as may be necessary or useful.

- (4) (1) In accordance with the rulemaking requirements of this chapter, the attorney general shall promulgate rules implementing the provisions of sections 67-5240 through 67-5255, Idaho Code. The rules shall specify:
 - (a) Form and content to be employed in giving notice of a contested case;
 - (b) Procedures and standards required for intervention in a contested case;
 - (c) Procedures for prehearing conferences;

- (d) Format for pleadings, briefs, and motions;
- (e) The method by which service shall be made;
- (f) Procedures for the issuance of subpoenas, discovery orders, and protective orders if authorized by other provisions of law;
- (g) Qualifications for persons seeking to act as a representative for parties to contested cases;
- (h) Procedures to facilitate informal settlement of matters; and
- (i) Procedures for placing ex parte contacts on the record.
- $\frac{(5)}{(2)}$ (a) After July 1, 1993, the rules promulgated by the attorney general under this section shall apply to all agencies that do not affirmatively promulgate alternative procedures after the promulgation of the rules by the attorney general. The rules promulgated by the attorney general shall supersede the procedural rules of any agency in effect on June 30, 1993, unless that agency promulgates its own procedures as provided in paragraph (b) of this subsection.
- (b) After July 1, 1993, an agency that promulgates its own procedures shall include in the rule adopting its own procedures a finding that states the reasons why the relevant portion of the attorney general's rules were inapplicable to the agency under the circumstances.
- (6) (3) With respect to contested cases and other proceedings conducted by the office of administrative hearings as authorized by this chapter, rules promulgated by the attorney general or any agency pursuant to subsection (4) (1) of this section shall remain in full force and effect, except with respect to hearing officer qualifications, until such time as the office of administrative hearings promulgates replacement rules, and thereafter such rules of the office of administrative hearings shall govern unless otherwise required by governing federal law."; and renumber subsequent sections accordingly.

AMENDMENT TO THE BILL

On page 9, following line 21, insert:

"SECTION 10. That Section 39-107, Idaho Code, be, and the same is hereby amended to read as follows:

- 39-107. BOARD -- COMPOSITION -- OFFICERS -- COMPENSATION -- POWERS -- SUBPOENA -- DEPOSITIONS -- REVIEW -- RULES.
 - (1) (a) The board of environmental quality shall consist of seven (7) members who shall be appointed by the governor, with the advice and consent of the senate. The members shall serve at the pleasure of the governor. Each member of the board shall be a citizen of the United States, a resident of the state of Idaho, and a qualified elector and shall be appointed to assure appropriate geographic representation of the state of Idaho. Not more than four (4) members of the board shall be from any

- one (1) political party. Two (2) members of the board shall be chosen with due regard to their knowledge of and interest in solid waste; two (2) members shall be chosen for their knowledge of and interest in air quality; two (2) members shall be chosen for their knowledge of and interest in water quality; and one (1) member shall be chosen with due regard for his knowledge of and interest in air, water and solid waste issues. At least four (4) of the board members shall represent the public's interest and not derive any significant portion of their income from persons subject to air quality permits or enforcement orders.
- (b) The members of the board of environmental quality shall be appointed for a term of four (4) years. In appointing members whose terms begin in 2000, the governor shall designate three (3) members to be appointed for a term of three (3) years, two (2) members appointed for a term of four (4) years, and two (2) members appointed for a term of two (2) years. Successors to the members appointed for a term of less than four (4) years shall be appointed for a term of four (4) years thereafter.
- (2) The board annually shall elect a chairman, a vice chairman, and a secretary and shall hold such meetings as may be necessary for the orderly conduct of its business, and such meetings shall be held from time to time on seventy-two (72) hours' notice of the chairman or a majority of the members. Five (5) members shall be necessary to constitute a quorum at any regular or special meeting, and the action of the majority of members present shall be the action of the board. The members of the board shall be compensated as provided in section 59-509(h), Idaho Code.
- (3) The board, in furtherance of its duties under this act and under its rules, shall have the power to administer oaths, certify to official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony. The board may, if a witness refuses to attend or testify or to produce any papers required by such subpoenas, report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses or the production of said papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required by this subpoena before the board or has refused to answer questions propounded to him in the course of said proceedings, and ask an order of said court compelling the witness to attend and testify and produce said papers before the board. The court, upon the petition of the board, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he has not attended and testified or produced said papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board and regularly served, the court shall thereupon order that said witness appear before the board at the time and place fixed in said order and testify or produce the required papers. Upon failure to obey said order, said witness shall be dealt with for contempt of court.

(4) The director, his designee, or any party to the action may, in an investigation or hearing before the board, cause the deposition or interrogatory of witnesses or parties residing within or without the state to be taken in the manner prescribed by law for like depositions and interrogatories in civil actions in the district court of this state and to that end may compel the attendance of said witnesses and production of books, documents, papers and accounts.

- (5) Any person aggrieved by an action or inaction of the department shall be afforded an opportunity for a fair hearing upon request therefor in writing pursuant to chapter 52, title 67, Idaho Code, and the rules promulgated thereunder. In those cases where the board has been granted the authority to hold such a hearing pursuant to a provision of the Idaho Code, the hearing may be conducted by the board at a regular or special meeting, or the board may designate hearing officers, who shall have the power and authority to conduct hearings in the name of the board at any time and place. In any hearing, a member of the board or a hearing officer designated by it shall have the power to administer oaths, examine witnesses, and issue in the name of the board subpoenas requiring the testimony of witnesses and the production of evidence relevant to any matter in the hearing.
- (6) Any person adversely affected by a final determination of the board may secure judicial review by filing a petition for review as prescribed under the provisions of chapter 52, title 67, Idaho Code. The petition for review shall be served upon the chairman of the board, the director of the department, and upon the attorney general of the state of Idaho. Such service shall be jurisdictional and the provisions of this section shall be the exclusive procedure for appeal.
- (7) The board, by the affirmative vote of four (4) of its members, may adopt, amend or repeal the rules, codes, and standards of the department that are necessary and feasible in order to carry out the purposes and provisions of this act and to enforce the laws of this state. The rules and orders so adopted and established shall have the force and effect of law and may deal with any matters deemed necessary and feasible for protecting the environment of the state.
- (8) All rulemaking proceedings and hearings of the board shall be governed by the provisions of chapter 52, title 67, Idaho Code.
- (9) The board shall adopt contested case rules consistent with the rules adopted by the attorney general under section $67-5206\frac{(4)}{(1)}$, Idaho Code, the provisions of this act and other statutory authority of the department.
- (10) All rules, permits and other actions heretofore adopted, issued or taken by the board of health and welfare pertaining to the environmental protection functions administered by the division of environmental quality shall remain in full force and effect until superseded.
- (11) The board of environmental quality shall be the successor to all rights, powers and duties of the board of health and welfare regarding all rulemaking proceedings, administrative proceedings, contested cases, civil actions, contracts, delegations, authority and other matters pertaining to environmental protection functions administered by the division of environmental quality.

(12) Upon creation of the board of environmental quality, all pending business before the board of health and welfare relating to environmental protection functions administered by the division of environmental quality shall be transferred to and determined by the board of environmental quality."; and renumber the subsequent section accordingly.

CORRECTION TO TITLE

On page 1, in line 3, following "TERMS;" insert: "AMENDING SECTION 67-5206, IDAHO CODE, TO REMOVE PROVISIONS REGARDING PROMULGATION OF RULES IMPLEMENTING THE ADMINISTRATIVE PROCEDURE ACT;"; and in line 16, following "CORRECTIONS;" insert: "AMENDING SECTION 39-107, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE;".